

HOUSE BILL No. 1579

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-3-6.

Synopsis: Contraband cigarettes. Requires cigarette importers and manufacturers to obtain licenses from the alcohol and tobacco commission. Specifies to and from whom distributors, importers, manufacturers, and retailers may sell and receive cigarettes. Requires importers and manufacturers to maintain documentation concerning certain cigarette transactions. Imposes a monetary penalty. Provides for public and private rights of action.

Effective: July 1, 2005.

Cherry, Mahern

January 25, 2005, read first time and referred to Committee on Public Policy and Veterans Affairs.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1579

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 24-3-6 IS ADDED TO THE INDIANA CODE AS
- 2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2005]:
- 4 **Chapter 6. Contraband Cigarettes**
- 5 **Sec. 1. As used in this chapter, "commission" means the alcohol**
- 6 **and tobacco commission created by IC 7.1-2-1-1.**
- 7 **Sec. 2. As used in this chapter, "distributor" means a**
- 8 **distributor (as defined in IC 6-7-1-6) that holds a registration**
- 9 **certificate issued under IC 6-7-1-16.**
- 10 **Sec. 3. As used in this chapter, "importer" means a person that**
- 11 **brings cigarettes into the United States for sale or distribution.**
- 12 **Sec. 4. As used in this chapter, "licensed" means holding a**
- 13 **license issued under section 9 of this chapter.**
- 14 **Sec. 5. As used in this chapter, "manufacturer" means a person**
- 15 **that manufactures or otherwise produces cigarettes to be sold in**
- 16 **the United States.**
- 17 **Sec. 6. As used in this chapter, "person" has the meaning set**



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1 forth in IC 6-7-1-4.

2 Sec. 7. As used in this chapter, "retailer" means a person that
3 sells cigarettes to a consumer. The term includes a distributor.

4 Sec. 8. As used in this chapter, "stamp" has the meaning set
5 forth in IC 6-7-1-9.

6 Sec. 9. (a) The commission may issue or renew a license to the
7 following applicants:

8 (1) An importer.

9 (2) A manufacturer.

10 The commission shall prescribe the form of an application.

11 (b) If an applicant conducts business at two (2) or more places
12 in Indiana, the applicant must apply for a separate license for each
13 place of business. If an applicant does not conduct business in
14 Indiana, the applicant must apply for a license for the applicant's
15 principal place of business. An applicant shall display a license at
16 each place of business.

17 (c) The commission shall prescribe the form and duration of a
18 license issued under this section. However, a license may not be
19 valid for more than three (3) years from the date of issuance.

20 (d) A license issued under this section is nontransferable.

21 (e) If an applicant changes a place of business, the applicant
22 may exchange at no charge the license issued under this chapter for
23 that place of business for a new license for the new place of
24 business.

25 (f) The commission shall impose a fee of five hundred dollars
26 (\$500) to issue or renew a license issued under this section.

27 (g) The commission shall not issue or renew a license if:

28 (1) the applicant owes at least five hundred dollars (\$500) in
29 taxes imposed under IC 6-7-1-12;

30 (2) the commission revoked the applicant's license within two
31 (2) years before the application;

32 (3) the applicant commits an offense under IC 6-7-1-21; or

33 (4) the applicant does not comply with IC 24-3-3-12.

34 (h) The commission may revoke or suspend a license if the
35 applicant:

36 (1) is not eligible to receive or renew a license under
37 subsection (f); or

38 (2) violates this chapter.

39 Sec. 10. (a) A distributor may apply a stamp only to cigarettes
40 that are:

41 (1) received from a licensed importer or licensed
42 manufacturer; and

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(2) identified for distribution or sale in Indiana.

(b) A distributor shall store stamped and unstamped cigarettes separately.

(c) A distributor may transfer unstamped cigarettes only as provided in IC 6-7-1-18.

Sec. 11. (a) A manufacturer or an importer may sell or distribute cigarettes in Indiana only to a distributor or a licensed importer.

(b) A manufacturer that sells or distributes cigarettes to a licensed importer under subsection (a) must be a licensed manufacturer.

(c) A distributor may sell or distribute cigarettes only to a distributor or a retailer.

(d) A distributor may obtain cigarettes only from a distributor, a licensed importer, or a licensed manufacturer.

(e) A retailer may obtain cigarettes only from a distributor.

Sec. 12. (a) A retailer shall report to the commission each sale or distribution of at least one thousand (1,000) cigarettes to a person in a single transaction.

(b) The commission shall prescribe the form of a report made under subsection (a). However, the report shall include:

- (1) the name, address, driver's license number (if applicable), and signature of the person receiving the cigarettes;
- (2) the name of the purchaser of the cigarettes, if not the person receiving the cigarettes; and
- (3) if the person receiving the cigarettes is an agent, the name of the person's principal.

Sec. 13. A distributor shall report the following information for each place of business belonging to the distributor to the office of the attorney general not later than the fifteenth day of each month:

- (1) The number and brand of cigarettes:
 - (A) distributed;
 - (B) shipped into Indiana; or
 - (C) shipped within Indiana;
 during the immediately preceding month.
- (2) The name and address of each person to which cigarettes described in subdivision (1) were distributed or shipped.

Sec. 14. (a) An importer or a manufacturer shall maintain documentation for each place of business belonging to the importer or manufacturer for each transaction other than a retail transaction with a consumer involving the sale, purchase, transfer, consignment, or receipt of cigarettes. The documentation must

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include:

(1) the name and address of the parties to the transaction; and

(2) the quantity by brand style of cigarettes involved in the transaction.

(b) Subject to subsection (c), an importer or a manufacturer shall preserve documentation described in subsection (a) at the place of business at which each transaction occurs.

(c) The commission may allow an importer or a manufacturer with multiple places of business to preserve documentation described in subsection (a) at a centralized location. However, the importer or manufacturer shall provide duplicate documentation at each place of business upon request by the commission.

(d) An importer or a manufacturer shall maintain documentation under this section for five (5) years from the date of the transaction.

(e) The commission may:

(1) obtain access to; and

(2) inspect at reasonable times;

the documentation maintained under this section. The commission may share the documentation with other law enforcement officials.

Sec. 15. (a) The commission may enter and inspect, without a warrant during normal business hours or with a warrant during nonbusiness hours, the facilities and records of an importer or a manufacturer.

(b) If the commission or a law enforcement officer has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this chapter, the commission or the law enforcement officer may stop and inspect the vehicle for cigarettes being transported in violation of this chapter.

Sec. 16. (a) A person who violates this chapter is liable for a civil penalty equal to the greater of:

(1) five (5) times the value of the cigarettes involved in the violation; or

(2) one thousand dollars (\$1,000).

(b) A civil penalty under this section is in addition to any other penalty imposed.

Sec. 17. Either or both of the following may bring an action to prevent or restrain violations of this chapter:

(1) The attorney general or the attorney general's designee.

(2) A person that holds a valid permit under 26 U.S.C. 5712.

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